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EXAMINER

ISMAL, SHAWKI SAIF

ART UNIT PAPER NUMBER

2155

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,688

Applicant(s)

TSO, FRANK

Examiner

Shawki S Ismail

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☒ Claim(s) 1 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

RESPONSE TO AMENDMENT

1. This action is responsive to the amendment received on January 19, 2005. Applicant amended claims 1, 7 and 12. Claims 1-17 remain for further examination.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 1 recites "an input module, with which a user enter a backup request at a time a backup procedure starts." The specification does not provide proper antecedent to the limitation that the request is made at the time a backup procedure starts.

Claim Rejections - 35 USC § 112

3. Claim 1 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 recites "an input module, with which a user enter a backup request at a time a backup procedure starts." It is unclear how the user would enter a backup request at the time when the backup procedure starts. Examiner will (for prosecution sake) interpret this limitation as "user makes a backup request and then the backup requests starts."

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 8, and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kanevsky et al, (Kanevsky)** U.S. Patent No. **6,494,949** and in view of **Gold et al., (Gold)** U.S. Patent No. **6,785,786**.

6. As to claim 1, Kanevsky teaches an auto-backup system for a portable electronic device being able to wirelessly-connect to a computer device having a backup I/O module and a database. Kanevsky teaches an input module, with which a user enters a backup request (col. 2, lines 45-55, the type of backup done in an emergency is pre-selected by the system administrator or the owner). Kanevsky also teaches a backup management module, which transmits at least one set of data stored in the portable electronic device wirelessly to the computer device and saves the data in the database through the backup I/O module (col. 4, lines 39-67, initial emergency network map 128.)

Kanevsky does not explicitly teach wherein user makes the backup request at the time a backup request starts. Gold teaches a computer data backup and recovery system. Prior to backup a client sends to the backup apparatus a request including information representing the files to be backed up (see abstract).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the teaching of Gold in to the invention of Kanevsky in order to maintain load balance on the backup apparatus. A request is made prior to backup in order to ensure that the backup apparatus is able to handle the backup and not be overloaded (col. 14, lines 24-35).

Kanevsky does not explicitly teach wherein the backup management module being in the portable electronic device. Gold teaches an agent 215 a which contains a Data Transfer Module 350 (DTM) located at the client device which performs the actual transfer of the backup data from the client to the backup apparatus (col. 7, line 66 – col. 8, line 11).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the teaching of Gold into the invention of Kanevsky in order to accurately identify all files that need backup and efficiently transmit them to the backup apparatus.

7. As to claim 2, Kanevsky teaches the system of claim 1, further comprising:

a network connecting module, which establishes wireless signal communications between the portable electronic device and the computer device (col. 4, lines 39-67, updated emergency network map 128'.)

8. As to claim 4, Kanevsky teaches the system of claim 1, wherein the data are in a file (col. 2, lines 46-49 and col. 4, lines 21-29.)
9. As to claim 5, Kanevsky teaches the system of claim 1, wherein the computer device contains a network server (claim 9.)
10. As to claim 12, it contains similar limitations as in claims 1 and 7 above; therefore it is rejected under the same rationale.
11. As to claim 13, Kanevsky teaches the method of claim 12 with the portable electronic device further including a network connecting module and the method further comprising a network connecting step, in which the network connecting module establishes wireless signal communications between the portable electronic device and the computer device (col. 4, lines 39-67, updated emergency network map 128'.)
12. As to claim 15, Kanevsky teaches the method of claim 12, wherein the data are in a file (col. 2, lines 46-49 and col. 4, lines 21-29.)
13. As to claim 16, Kanevsky teaches the method of claim 12, wherein the computer device contains a network server (claim 9.)
14. As to claims 3, 8, and 14, Kanevsky teaches the system of claim 1, 7, and 12, respectively wherein the data stored on the portable electronic device is transmitted wirelessly to the computer and saved in a database (col. 4, lines 39-67.) Kanevsky does not explicitly teach wherein a data restoration is sent automatically to the device and sends the data wirelessly to the portable electronic device.

Gold teaches a data backup and recovery system wherein the backup apparatus enables a client to restore any of it's lost data by copying it directly from disk. It would

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have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the teaching of Kanevsky and Gold to have a data restoration that restored the data after it had been backed up so that increased efficiency is gained by avoiding unnecessary work.

15. Claims 6, 11, and 17, are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kanevsky et al, (Kanevsky)** U.S. Patent No. **6,494,949**.

16. As to claims 6, 11, and 17, Kanevsky teaches the system of claims 5, 10, and 16, respectively wherein the portable electronic device connects wirelessly to the network server (col. 1, lines 55-58.) Kanevsky does not explicitly teach wherein the device connects to the network server using the general packet radio service (GPRS).

It would have been obvious to one with ordinary skill in the art at the time of applicants invention to use a (GPRS) to connect to the network server in order increased system efficiency is gained. GPRS increased efficiency of a system because GPRS is particularly suited for sending and receiving small bursts of data, such as e-mail and web browsing, as well as large volumes of data.

Claim Rejections - 35 USC §102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of

paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 7, 9, and 10, are rejected under 35 U.S.C. 102(e) as being anticipated by **Kanevsky et al, (Kanevsky) U.S. Patent No. 6,494,949.**

17. As to claim 7, Kanevsky teaches an auto-backup system for a portable electronic device having an input module, a network connecting module and a backup management module, the auto-backup system comprising:

a database in a computer device (Fig. 2, col. 2 line 66 – col. 3, line 9, col. 2, lines 30-33, server 116 contains a storage area to store the backup data); and

a backup I/O module in the computer device, which receives at least one set of data transmitted from the backup management module when the input module receives a backup request and the network connecting module establishes wireless signal communications with the computer device and stores the data in the database of the computer device (server 116 receives the data to backup based on information from classifier module 118, the received data is then stored in server 116's storage area (Fig. 2, col. 2 line 66 – col. 3, line 9).

18. As to claim 9, Kanevsky teaches the system of claim 7, wherein the data are in a file (col. 2, lines 46-49 and col. 4, lines 21-29.)

19. As to claim 10, Kanevsky teaches the system of claim 7, wherein the computer device contains a network server (see abstract.)

Response to Arguments

20. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of new ground of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawki S Ismail whose telephone number is 571-272-3985. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on 571-272-3978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shawki Ismail
Patent Examiner
April 11, 2004



**BHARAT BAROT
PRIMARY EXAMINER**